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Environment & Natural Resources Division
United States Department of Justice

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United States Attorneys Office
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Seattle, WA 98104

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

BAY CHEMICAL COMPANY, INC.; BARBARA
ALLEN; CENEX AGRICULTURE, INC.; LONE STAR
NW, INC.; MINTERCREEK DEVELOPMENT;
NORDLUND BOAT COMPANY, INC.; NORDLUND
PROPERTIES CO. INC.; NORMAN NORDLUND;
PHYLLIS NORDLUND; RYDER TRUCK RENTAL,
INC.; STREICH BROTHERS, INC.; KATHRYN M.
SWINEHART; VANCE LIFT TRUCK SERVICES,
INC.; OLSON & CURRAN BARNACLE STOPPING;
SEAGULL PROOFING; SALT WATER FREE;
VERTICAL DRY DOCK CO., LTD.; dba OLE &
CHARLIE'S HIGH & DRY CO. AND OLE & DICK'S
BOATHOUSES; DON OLSON & ARNOLD OLSON
dba BIG "O" CO.; DON OLSON; ARNOLD & PETER
CURRAN dba WEST-WATERWAY ASSOCIATES;
DONALD S. AND BARBARA L. OLSON;
CHARLES P. AND PATRICIA CURRAN; MOLLY A.
BARRY; KAY E. OLSON.

Defendants.

No. C99-5521 RJB

UNITED STATES'
STATUS REPORT

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2 The complaint in this action seeks to recover, pursuant to Section 107 of the Comprehensive
3 Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607,
4 response costs incurred and to be incurred by the U.S. Environmental Protection Agency ("EPA")
5 in the Hylebos Waterway Problem Areas in Operable Unit 1 ("OU1") of the Commencement Bay
6 Nearshore/Tideflats Superfund Site (hereinafter "the Site") located in Tacoma, Washington. The
7 defendants include owners and operators of properties within two problem areas of one of the nine
8 operable units at the Site.
9

10 The proposed Consent Decree embodies an agreement with seventeen potentially responsible
11 parties ("PRPs") pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, to pay approximately \$
12 762,880 in past and future response costs associated with the Hylebos Waterway Problem Areas of
13 OU1. The above-described payments include a premium to be paid by each settling party to offset
14 the risks that actual future response costs will exceed current estimates.
15

16 The Consent Decree provides the settling defendants with releases for civil liability for
17 response costs under Sections 106 and 107 of CERCLA relating to the Hylebos Waterway Problem
18 Areas of OU 1 of the Site. The Consent Decree explicitly reserves the United States' claims for
19 response costs associated with other operable units and problem areas of the Site, natural resource
20 damages, and other potential United States' claims.
21

22 The proposed Consent Decree and Complaint in *United States v. Bay Chemical Company,*
23 *et al.*, Civil Action No. C99-5521RJB, were lodged with the United States District Court for the
24 Western District of Washington on October 5, 1999. On October 26, 1999, this Consent Decree was
25 initially noticed in the Federal Register. Stephen T. Parkinson, Esq., counsel for Elf Atochem North
26

1 America, Inc. ("Elf Atochem"), one of approximately 125 potentially responsible parties for the
2 Hylebos Waterway in Commencement Bay but not a party in this Complaint or De Minimis Consent
3 Decree, contacted the United States and requested an extension of the thirty day comment period.
4 The comment period, which otherwise would have expired on November 25, 1999, was extended
5 to December 9, 1999. On December 8, 1999, Elf Atochem provided the United States with a
6 thirteen page letter with nine attachments opposing entry of the Consent Decree. The United States
7 is currently reviewing these materials.
8

9 While the United States regrets the inconvenience to the Court of having to deal with this
10 delay, it is incumbent upon us to carefully consider the issues raised by Elf Atochem. This endeavor
11 requires a substantial review. If we conclude the issues materially affect the appropriateness of the
12 Consent Decree, we will so advise the Court and counsel. If we conclude the Decree is reasonable
13 and appropriate, we will provide our reasons to the Court and request the Decree be entered by the
14 Court. The Court will then review the Decree to ensure that it is fair, adequate, and reasonable
15 [and] that it is consistent with the objectives of CERCLA. We expect to complete our review of
16 the issues raised and be prepared to report to the Court seeking approval or withdrawal of the
17 Consent Decree by Friday, February 25, 2000.
18

19 If you have any questions or concerns with regard to this matter, please contact Neil Cowie
20 at (202) 514-7784.
21
22
23
24
25
26

1 Respectfully submitted,

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4 Date: Jan. 18, 2000

Michael McNulty for Neil Cowie
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NEIL M. COWIE, Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
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16 OF COUNSEL:

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18 Assistant Regional Counsel
19 U.S. Environmental Protection Agency
20 1200 Sixth Avenue
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27 UNITED STATES' STATUS REPORT - 4

28
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044

APPEARANCE OF NEIL COWIE

Neil Cowie, Trial Attorney in the Environmental Enforcement Section of the Environment and Natural Resources Division of the Department of Justice, hereby enters his appearance on behalf of the United States of America in this Action.

Respectfully submitted,

Date: January 18, 2000

Neil Cowie

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UNITED STATES' NOTICE OF APPEARANCE

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6
7 UNITED STATES DISTRICT COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON
9

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

CIVIL ACTION
NO. C99-5521RJB

13 BAY CHEMICAL COMPANY, INC.; BARBARA
14 ALLEN; CENEX AGRICULTURE, INC.; LONE STAR
15 NW, INC.; MINTERCREEK DEVELOPMENT;
16 NORDLUND BOAT COMPANY, INC.; NORDLUND
17 PROPERTIES CO. INC.; NORMAN NORDLUND;
18 PHYLLIS NORDLUND; RYDER TRUCK RENTAL,
19 INC.; STREICH BROTHERS, INC.; KATHRYN M.
20 SWINEHART; VANCE LIFT TRUCK SERVICES,
21 INC.; OLSON & CURRAN BARNACLE STOPPING;
22 SEAGULL PROOFING; SALT WATER FREE;
23 VERTICAL DRY DOCK CO., LTD.; dba OLE &
24 CHARLIE'S HIGH & DRY CO. AND OLE & DICK'S
25 BOATHOUSES; DON OLSON & ARNOLD OLSON
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27 CURRAN dba WEST-WATERWAY ASSOCIATES;
28 DONALD S. AND BARBARA L. OLSON;
CHARLES P. AND PATRICIA CURRAN; MOLLY A.
BARRY; KAY E. OLSON.

Defendants.

26 Certificate of Service - 1

U.S. Department of Justice
Environmental & Natural Resources Div.
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the United States' Status Report and Notice of Appearance was served by U.S. Mail, on January 18, 2000 upon the following persons:

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Certificate of Service - 2

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